

of Division Courts, and this act and the act relating to replevin shall so far as any such suit is concerned be read as if they formed part of the act respecting Division Courts. (Consolidated Statutes for Upper Canada, cap. 19.)

This new and important jurisdiction furnishes another proof of the necessity for an early issue of a new set of Rules—for as proceedings are to be “as nearly as may be the same as in the other cases within the jurisdiction of the Division Courts,” it is obvious that to secure anything approaching uniformity of procedure general rules and appropriate forms must be provided.

Clerks will notice that they are not authorised unless in the instances mentioned in the act to issue a writ (sec. 1) without a judge's order, and until procedure in the courts and rules are given on authority, doubtless the judge granting the order would send with it a form for the writ—like all the writs it should be signed by the clerk and issued under the seal of the Court.

This new jurisdiction materially enlarges the duties of officers, yet but little can be said with advantage till a practice is settled. All we can do at present is to give the practical proceedings in suing out the writ from a Court of Record and replevying goods under it at least so much and in such a shape as may be necessary to help officers to a better understanding of the subject.

It will be observed that the 7th section incorporates the acts relating to replevin so far as any suit brought in a Division Court is concerned.

Suppose, then, the goods of a party are wrongfully taken or detained, and he desires to obtain possession of them—in other words to replevy—the following steps are taken in the Superior Courts.

The person claiming the property his servant or agent makes an affidavit setting forth the facts of the wrongful taking or detention, the value and description of the property and that the person claiming is the owner or is lawfully entitled to the possession thereof.

On this affidavit application is made to a Judge for an order for a writ of Replevin to issue and the Judge either grants the order on an *ex parte* application or a rule or order calling on the defendant to shew cause why the writ should not issue.

When the order is granted it is taken to the clerk who files it and issues the writ. The party obtaining it, then takes it to the sheriff to be executed, and at the same time and before any action is taken on the writ he must give a bond to the sheriff, himself and at least two securities, in treble the value of the property to be repleved, conditioned for his prosecuting the suit with effect and without delay, that he will make a return of the property, if such is adjudged and will pay such damages as the defendant may sustain by the issuing of the writ if he fails to recover judgment, and will observe and keep all rules and orders made in the suit.

The sheriff upon being satisfied in respect to the bond at once proceeds to replevy the property and delivers it into the possession of the claimant or his agent. He then makes a return of the writ with a statement or schedule annexed thereto giving the names, residence and additions of the sureties, date of the bond, the name or names of the witness or witnesses thereto, and the number, quantity and quality of the articles of property repleved.

If only a portion of the property is replevied the statement should also mention the articles not replevied and the reason why not.

As the act provides that in Division Courts the matter shall be disposed of without formal pleadings, the claimant or defendant will not require to take any further action in the matter until the trial. The cause will be entered by the clerk in his books, and included in the list for trial in the usual manner.

The foregoing summary applies to the usual class of cases but in some instances the property to be replevied or a portion of it, cannot be found in the sheriff's bailiwick, for which contingency provision is also made in the Replevin Act, the nature of which together with other matters relating to this action, necessary to be known by clerks and bailiffs, we shall treat of in a subsequent number.

REPLEVIN BOND AND AFFIDAVIT.

The following we have received from a valued correspondent, a County Judge, of whose extensive experience we shall be happy to avail ourselves in matters of Division Court practice. We take the liberty of publishing his letter with the forms accompanying it.

To the Editors of the Law Journal.

DEAR SIRS,—Having been called upon yesterday to allow the issue of a writ of Replevin out of one of the Division Courts of this County, under the sixth section of the Act of last Session, 23rd Vic., ch. 65, I found it necessary to frame a form of writ. As I have taken some pains to make the form of writ given in the Replevin Act applicable to the Division Courts, and as the form may be useful to the readers of the *Law Journal*, I take the liberty of enclosing it for publication. I also enclose a form of affidavit for the writ which I have drawn up for the use of my clerks. I have endeavoured to embrace in it all the cases of wrongful taking and detention likely to occur in practice, and to make the allegations as concise as possible.

Urgent cases requiring the issue of a writ without a Judge's order, under the 2nd section of the Act, are not likely to occur in the Division Courts, and therefore I have not made the affidavit applicable to such cases; but the attention of the clerks might be called to the additional allegations required by that section.

Cases under the 3rd section are likely to occur frequently, but unless there is great urgency, a Judge's order should be obtained for the writ, as a precaution against informality or irregularity in the proceedings. The form of affidavit sent, is or may be made applicable to cases coming within that section.

I would suggest that you should, in an early number of the *Law Journal*, inform the Clerks and Bailiffs of their duties under this Act; such directions with regard to these duties, as you have given to guide them in the performance of their other duties, would be very useful.

FORM OF WRIT OF REPLEVIN.

No. —, A.D. 1860.

In the — Division Court of the County of —.

(Seal of Court.)

You are hereby commanded that without delay you cause to be replevied to (A. B.), his goods, chattels, and personal property following, that is to say (here describe the property as in the affidavit), which said (A. B.) alleges to be of the value of — dollars, and which (C. D.) hath taken and unjustly detains (or unjustly detain) as it is said, in order that the